

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EVEREST INDEMNITY INSURANCE CO.,)
)
 Plaintiff,)
)
 vs.)
)
 AVENTINE-TRAMONTI HOMEOWNERS)
 ASSOCIATION et al.,)
)
 Defendants.)
 _____)

2:09-cv-01672-RCJ-RJJ

ORDER

This is an interpleader action arising out of claims (and potential claims) by approximately sixty Defendants against Plaintiff Everest Indemnity Insurance Co. ("Everest"). Five motions are pending before the Court: Pipes Paving's Motion to File Counterclaim (ECF No. 131); Plaintiff's Motion to Strike Pipes Paving's Motion to File Counterclaim (ECF No. 164); Rising Sun Plumbing, LLC's Motion to File Counterclaim (ECF No. 150); Nevada Stairs, Inc.'s Motion to File Amended Answer and Counterclaim (ECF No. 152); and Plaintiff's Motion to Dismiss Counterclaim of Town Center Ventures, LLC (ECF No. 163).

I. FACTS AND PROCEDURAL HISTORY

In connection with a construction project at Fort Apache Road and Gilcrease Avenue in Las Vegas, Nevada, (the "Project") Plaintiff Everest issued an Owner Controlled Insurance Program Policy (the "Policy") effective May 15, 2003 through May 15, 2006 to Defendant Town Center Ventures, LLC ("TCV"), which covered TCV, as well as contractors and subcontractors. (Compl. ¶¶ 71, 77). The Policy provides \$1 million in coverage, subject to a \$50,000 "Self

1 Insured Retention.” (*Id.* ¶ 73). On or about January 15, 2008, Defendant Aventine-Tramonti
2 Homeowners Association (the “Association”) sued TCV and Defendant Cams Construction
3 (“Cams”) in state court for alleged construction defects. (*Id.* ¶ 78). Plaintiff undertook the
4 defense of its insureds TCV and Cams and had already expended \$150,000 in their defense as of
5 the date of the present Complaint (August 28, 2009), leaving approximately \$850,000 available
6 under the Policy. (*Id.* ¶ 81). Since October 2007, the Association has made several demands
7 under the Policy and has rejected both Plaintiff’s own policy-limits settlement offer and a
8 mediator’s proposal that included payment of the policy limits, choosing instead to pursue a
9 multi-million-dollar judgment against Plaintiff’s insureds. (*Id.* ¶ 83–84, 88). Plaintiff
10 acknowledges that the covered contractors and subcontractors are not named as defendants in the
11 state court litigation but alleges that they remain potentially liable for the damages sought therein
12 in the current litigation and potential future litigation. (*See id.* ¶ 89).

13 Because Plaintiff could potentially face rival claims from its various insureds under the
14 Policy that exceed the \$850,000 in its maximum liability under the policy, it filed the present
15 interpleader action. (*See id.* ¶ 90). Plaintiff has sued approximately sixty of its insureds under the
16 Policy, as well as the Association, TCV, and Cams, on two causes of action pursuant to 28
17 U.S.C. §§ 1335 and 2201: (1) Interpleader; and (2) Declaratory Relief. Plaintiff has deposited
18 \$850,000 with the Court. (*See* Certificate, Sept. 17, 2009, ECF No. 9).

19 Several Defendants have filed counterclaims: (1) Nevada Gypsum Floors, Inc., (*see*
20 Answer & Countercl., ECF No. 44); (2) TCV et al., (*see* Answer & Countercl., ECF No. 46); (3)
21 Avanti Door Group, (*see* Answer & Countercl., ECF No. 75); and (4) Western Pipeline
22 Construction Corp., (*see* Answer & Countercl., ECF No. 81). Pipes Paving; Rising Sun, LLC;
23 and Nevada Stairs, Inc. have each filed separate motions for leave to file their own
24 counterclaims. Nevada Stairs also seeks leave to amend its answer. Plaintiff has moved to strike
25 Pipes Paving’s motion and to dismiss the existing TCV Counterclaim for failure of those parties

1 to obtain counsel.

2 **II. LEGAL STANDARDS**

3 **A. Leave to Amend an Answer or to File a Counterclaim**

4 A party may amend a pleading once as a matter of course within twenty-one days of
 5 serving it if no responsive pleading is required. *See* Fed. R. Civ. P. 15(a)(1)(A). A district court
 6 has discretion to permit an amendment to an answer, *Gentala v. City of Tucson*, 213 F.3d 1055,
 7 1061 (9th Cir. 2000), or to grant leave to file a counterclaim, *Ralston-Purina Co. v. Bertie*, 541
 8 F.2d 1363, 1367 (9th Cir. 1976). Federal Rule of Civil Procedure 15(a) is to be applied liberally
 9 in favor of amendments and, in general, leave shall be freely given when justice so requires. *See*
 10 *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994). In considering whether to grant
 11 or deny a motion seeking leave to amend, a court may consider whether there is (1) bad faith, (2)
 12 undue delay, (3) prejudice to the opposing party, (4) futility in the amendment, and (5) whether
 13 the movant has previously amended the pleading. *See Allen v. City of Beverly Hills*, 911 F.2d
 14 367, 373 (9th Cir. 1990).

15 **B. Rule 12(f)**

16 “The court may strike from a pleading an insufficient defense or any redundant,
 17 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). A district court’s ruling on
 18 a motion to strike is reviewed for an abuse of discretion. *See Hambleton Bros. Lumber Co. v.*
 19 *Balkin Enters., Inc.*, 397 F.3d 1217, 1224 n.4 (9th Cir. 2005).

20 **C. Appearances of Business Entities in Federal Court**

21 A business entity must be represented by a licensed attorney in federal court. *See*
 22 *Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 202 (1993)
 23 (citing 28 U.S.C. § 1654); *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir.
 24 1993) (“A corporation may appear in federal court only through licensed counsel.”); *see also In*
 25 *re Discipline of Schaefer*, 25 P.3d 191, 200 (Nev. 2001) (“We have consistently held that a legal

1 entity such as a corporation cannot appear except through counsel . . .”).

2 **III. ANALYSIS**

3 **A. Pipes Paving's Motion for Leave to File Counterclaim and Plaintiff's Motion**
4 **to Strike**

5 Pipes Paving seeks leave to amend its Answer to add counterclaims for breach of
6 contract, unjust enrichment, and breach of the covenant of good faith and fair dealing. (*See* Mot.
7 Ex. A, ECF No. 131). In response, Plaintiff moves to strike the motion because Pipes paving is
8 not represented by counsel. Indeed, the record indicates that pipes Paving has not been
9 represented by counsel since July 13, 2010. The Court therefore denies its motion to amend and
10 grants the motion to strike it.

11 **B. Rising Sun Plumbing's Motion for Leave to File Counterclaim**

12 Rising Sun Plumbing seeks leave to file counterclaims for declaratory relief, breach of
13 contract, and breach of the covenant of good faith and fair dealing. (*See* Mot., ECF No. 150).
14 Plaintiff has filed a notice clarifying that its motion to strike does not apply to Rising Sun
15 Plumbing's motion, and Plaintiff has not otherwise opposed the motion. The Court therefore
16 grants the motion. *See* L.R. Civ. Prac. 7-2(d).

17 **C. Nevada Stairs' Motion for Leave to File Counterclaim**

18 Nevada Stairs seeks leave to amend its answer to file counterclaims for breach of
19 contract, unjust enrichment, and breach of the covenant of good faith and fair dealing. (*See* Mot.
20 Ex. A, ECF No. 152-1). Plaintiff has not opposed the motion. The Court therefore grants the
21 motion. *See* L.R. Civ. Prac. 7-2(d).

22 **D. Motion to Dismiss Counterclaim of TCV**

23 Finally, Plaintiff has moved to dismiss the existing TCV Counterclaim. That
24 Counterclaim is brought by TCV; Cams; Pageantry Communities, Inc.; Pageantry Development
25 Corp.; Pageantry Realty, Inc.; Pageantry Residential, LLC; and Premier Construction Corp.

1 (collectively, "Counterclaimants"). (*See* ECF No. 46). It contains counterclaims for breach of
2 contract, bad faith breach of insurance contract, and statutory unfair claims practices under
3 section 686A.310 of the Nevada Revised Statutes. (*See id.*). Plaintiff argues that
4 Counterclaimants' counsel withdrew on July 13, 2010, and Counterclaimants cannot pursue their
5 claims in federal court without representation. Plaintiff is correct on both counts.
6 Counterclaimants have not objected (they cannot object without counsel).¹ The Court grants the
7 motion.

8 CONCLUSION

9 IT IS HEREBY ORDERED that Pipes Paving's Motion to File Counterclaim (ECF No.
10 131) is DENIED.

11 IT IS FURTHER ORDERED that Plaintiff's Motion to Strike Pipes Paving's Motion to
12 File Counterclaim (ECF No. 164) is GRANTED.

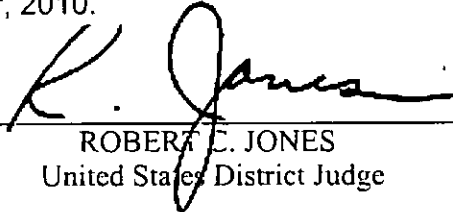
13 IT IS FURTHER ORDERED that Rising Sun Plumbing, LLC's Motion to File
14 Counterclaim (ECF No. 150) is GRANTED.

15 IT IS FURTHER ORDERED that Nevada Stairs, Inc.'s Motion to File Amended Answer
16 and Counterclaim (ECF No. 152) is GRANTED.

17 IT IS FURTHER ORDERED that Plaintiff's Motion to Dismiss Counterclaim of Town
18 Center Ventures, LLC (ECF No. 163) is GRANTED.

19 IT IS SO ORDERED.

20 Dated this 27th day of December, 2010.

21
22 
23 ROBERT C. JONES
United States District Judge

24
25 ¹The Association has filed a limited objection, not to oppose dismissal of the TCV
Counterclaim, but to note its objection to certain arguments Plaintiff makes in its motion
concerning the merits of the case.